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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/893,709	06/29/2001	Lambert Danner	016790-0430	5834
22428	7590	01/15/2004	EXAMINER	
FOLEY AND LARDNER SUITE 500 3000 K STREET NW WASHINGTON, DC 20007			SUGARMAN, SCOTT J	
			ART UNIT	PAPER NUMBER
			2873	

DATE MAILED: 01/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	09/893,709	DANNER ET AL.	
	Examiner	Art Unit	
	Scott J. Sugarman	2873	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 August 2003 and 05 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 June 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some c) ☐ None of:
- 1. ☒ Certified copies of the priority documents have been received.
 - 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>8-6-03</u> . | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

A call was made to the Examiner on December 15, 2003 indicating that an Amendment had been filed in this application on November 5, 2003, but the Office Action/Rejection of December 10, 2003 did not address the claims added by that amendment (claims 10-12). A copy of the Amendment of November 5, 2003 was faxed along with the postcard receipt on December 15, 2003. Therefore, it is believed that all claims that have been filed in the application have now been addressed and the Office Action of December 10, 2003 is superceded by the following action:

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on August 6, 2003 has been entered.

Art Unit: 2873

Pursuant to applicant's request filed on August 6, 2003 action by the Office was suspended on this application under 37 CFR 1.103(a) for a period of 3 months.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 5 and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Zapien et al (of record, IDS of 8-6-03). Zapien et al teaches a spectral ellipsometer having a refractive illuminating optical system for an illuminating ray bundle, coming from an illumination unit, for generating a measurement spot on a surface of a specimen (see Fig. 1 and explanation); and a detector unit that receives and detects, as a measured ray bundle, the light reflected from the surface at the location of the measurement spot, where the illuminating optical system is color-corrected (page 17, col. 1, lines 7-8) and where a receiving optical system that is color-corrected (page 17, col. 1, lines 13-15) is provided for the measured ray bundle. Note, that the range could be from 1.5 to 6.5 eV (see page 17, first and second columns) that would include a spectral range from approximately ultraviolet to approximately infrared.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-4 and 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zapien et al in view of Hecht (of record, IDS of 8-6-03). Zapien et al is cited for reasons set forth above against claims 1 and 5, but Zapien et al does not teach a specific construction of a color corrected, achromatic doublet or triplet. Hecht teaches on pages 232-238, the different types of achromatic optical systems (doublets and triplets) as well as the recited materials of making them. It would have been obvious to one of ordinary skill in the art to make the color corrected optical system of Zapien et al in the specific manner taught by Hecht, since this is the, literally, textbook manner of providing color correction in an optical system that requires it.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott J. Sugarman whose telephone number is (703)308-4821.

The fax phone number for the organization where this application or proceeding is assigned is (703)872-9318.

Art Unit: 2873

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0956.


Scott J. Sugarman
Primary Examiner
Art Unit 2873

sj
December 19, 2003